

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
OFFICE OF THE DIRECTOR

In the matter of administrative proceedings
against **MICHIGAN SUGAR COMPANY**, a
corporation organized under the laws of the
State of Michigan and doing business at
159 South Howard Avenue in the City of
Croswell, County of Sanilac, State of
Michigan

AQD No. 2018-19

SRN: B2876

STIPULATION FOR ENTRY OF FINAL ORDER
BY CONSENT

This proceeding resulted from allegations by the Michigan Department of Environmental Quality (MDEQ) Air Quality Division (AQD) against Michigan Sugar Company (Company), a corporation organized under the laws of the State of Michigan and doing business at 159 South Howard Avenue in the City of Croswell, County of Sanilac, State of Michigan, with State Registration Number (SRN) B2876 (Croswell Facility). The MDEQ alleges that the Company is in violation of the conditions of Renewable Operating Permit (ROP) No. MI-ROP-B2876-2013. Specifically, the MDEQ alleges that the Company has violated the following EU-PULPDRYER emission unit conditions in ROP No. MI-ROP-B2876-2013: exceeded the Particulate Matter (PM) emission limit, submitted the test results late, failed to maintain pollution control systems per the Malfunction Abatement Plan (MAP), failed to maintain the flue gas recirculation system per the Compliance Assurance Monitoring (CAM) plan, and failed to maintain multiclones per the CAM plan, as cited herein and in the Violation Notices dated January 30, 2018 and April 13, 2018. The Company and MDEQ stipulate to the termination of this proceeding by entry of a Stipulation for Entry of a Final Order by Consent (Consent Order).

The Company and MDEQ stipulate as follows:

1. The Natural Resources and Environmental Protection Act (NREPA), MCL 324.101 *et seq.*, is an act that controls pollution to protect the environment and natural resources in this State.
2. Article II, Pollution Control, Part 55 of the NREPA (Part 55), MCL 324.5501 *et seq.*, provides for air pollution control regulations in this State.

3. The MDEQ was created as a principal department within the Executive Branch of the State of Michigan pursuant to Executive Order 2011-1 and has all statutory authority, powers, duties, functions and responsibilities to administer and enforce all provisions of Part 55.

4. The MDEQ Director has delegated authority to the Director of the AQD (AQD Director) to enter into this Consent Order.

5. The termination of this matter by a Consent Order pursuant to Section 5528 of Part 55, MCL 324.5528, is proper and acceptable.

6. The Company and the MDEQ agree that the signing of this Consent Order is for settlement purposes only and does not constitute an admission by the Company that the law has been violated.

7. This Consent Order becomes effective on the date of execution (effective date of this Consent Order) by the AQD Director.

8. The Company shall achieve compliance with the aforementioned regulations in accordance with the requirements contained in this Consent Order.

COMPLIANCE PROGRAM AND IMPLEMENTATION SCHEDULE

PERMIT

9. On and after the effective date of this Consent Order, the Company shall comply with the emission limit of 0.10 lbs. of PM per 1000 lbs. of exhaust gasses for the EU-PULPDRYER emission unit conditions in MI-ROP-B2876-2013, as amended.

TESTING

10.A. Engineering Testing

1. By November 30, 2018, the Company shall conduct engineering testing in accordance with the approved engineering test plan (Engineering Test Plan) to determine and establish the parameters and effective parameter ranges to comply with the Pulp Dryer MAP and CAM plan. The Engineering Test Plan is specified in Exhibit A, incorporated by reference, and made an enforceable part of this Consent Order.

2. Not less than seven (7) days prior to conducting engineering testing, the Company, or its authorized agent, shall notify the AQD Saginaw Bay District, in writing, of the time and place of the tests and who shall conduct them. A representative of the AQD shall have the opportunity to witness the tests.

3. Within thirty (30) days after engineering test completion, the Company shall submit to the AQD Saginaw Bay District Supervisor a test report, which includes the test data and results.

10.B. PM Testing

1. The Company shall conduct compliance emission testing for PM during the 2018/2019 sugar beet processing campaign in accordance with the approved compliance test plan (Compliance Test Plan) to demonstrate compliance with the emission limits specified in MI-ROP-B2876-2013 for EU-PULPDRYER. The Compliance Test Plan is specified in Exhibit B, incorporated by reference, and made an enforceable part of this Consent Order.

2. Not less than seven (7) days prior to conducting compliance emission testing for PM, the Company, or its authorized agent, shall notify the AQD Saginaw Bay District Supervisor and the AQD Technical Programs Unit Supervisor, in writing, of the time and place of the tests and who shall conduct them. A representative of the AQD shall have the opportunity to witness the tests.

3. Within sixty (60) days after completing compliance emission testing for PM, the Company shall submit to the AQD Saginaw Bay District Supervisor and AQD Technical Programs Unit Supervisor a test report, which includes the test data and results.

Malfunction Abatement Plan and Compliance Assurance Monitoring Plan

11.A. By January 18, 2019, the Company shall submit a revised MAP to the AQD Saginaw Bay District Supervisor for approval. Upon approval, the Company shall operate EU-PULPDRYER in accordance with the AQD-approved MAP. The MAP shall be incorporated by reference into this Consent Order and shall be enforceable under this Consent Order.

11.B. By January 18, 2019, the Company shall submit a revised CAM plan to the AQD Saginaw Bay District Supervisor for approval. Upon approval, the Company shall operate

EU-PULPDRYER in accordance with the AQD-approved CAM plan. The CAM plan shall be incorporated by reference into this Consent Order and shall be enforceable under this Consent Order.

GENERAL PROVISIONS

12. This Consent Order in no way affects the Company's responsibility to comply with any other applicable state, federal, or local laws or regulations, including without limitation, any amendments to the federal Clean Air Act, 42 USC 7401 *et seq.*, Part 55, or their rules and regulations, or to the State Implementation Plan.

13. This Consent Order constitutes a civil settlement and satisfaction as to the resolution of the violations specifically addressed herein; however, it does not resolve any criminal action that may result from these same violations.

14. Within thirty (30) days after the effective date of this Consent Order, the Company shall pay to the General Fund of the State of Michigan, in the form of a check made payable to the "State of Michigan" and mailed to the Michigan Department of Environmental Quality, Accounting Services Division, Cashier's Office, P.O. Box 30657, Lansing, Michigan 48909-8157, a settlement amount of \$65,000.00, which includes AQD costs for investigation and enforcement. This total settlement amount shall be paid within thirty (30) days after the effective date of this Consent Order. To ensure proper credit, all payments made pursuant to this Consent Order shall include the "Payment Identification Number AQD40200" on the front of the check and/or in the cover letter with the payment. This settlement amount is in addition to any fees, taxes, or other fines that may be imposed on the Company by law.

15. On and after the date of this Consent Order, if the Company fails to comply with paragraph 9, 10.A.1, or 10.B.1, the Company is subject to a stipulated fine of up to \$5,000.00 per violation per day. On and after the effective date of this Consent Order, if the Company fails to comply with paragraphs 10.A.3, 10.B.3, or 11 of this Consent Order, the Company is subject to a stipulated fine of up to \$1,500.00 per violation per day. On and after the effective date of this Consent Order, if the Company fails to comply with any other provision of this Consent Order, the Company is subject to a stipulated fine of up to \$500.00 per violation per day. If the Company complies with the requirements of paragraphs 10.A and 10.B, then the AQD will not seek

stipulated fines if the Company fails to comply with the PM emission limit for EU-PULPDRYER in MI-ROP-B2876-2013 during the PM compliance emission testing and during the engineering testing periods. The amount of the stipulated fines imposed pursuant to this paragraph shall be within the discretion of the MDEQ. Stipulated fines submitted under this Consent Order shall be by check, payable to the State of Michigan within thirty (30) days after written demand and shall be mailed to the Michigan Department of Environmental Quality, Accounting Services Division, Cashier's Office, P.O. Box 30657, Lansing, Michigan 48909-8157. To ensure proper credit, all payments shall include the "Payment Identification Number AQD40200-S" on the front of the check and/or in the cover letter with the payment. Payment of stipulated fines shall not alter or modify in any way the Company's obligation to comply with the terms and conditions of this Consent Order.

16. The AQD, at its discretion, may seek stipulated fines or statutory fines for any violation of this Consent Order which is also a violation of any provision of applicable federal and state law, rule, regulation, permit, or MDEQ administrative order. However, the AQD is precluded from seeking both a stipulated fine under this Consent Order and a statutory fine for the same violation.

17. If the Company fails to pay any part of the settlement amount assessed in paragraph 14 or any stipulated fines assessed pursuant to paragraph 15 under this Consent Order by the due date, the Company shall pay a late payment penalty of \$50.00 per day for each day that the settlement amount or stipulated fines are past due.

18. The Company agrees not to contest the legal basis for the settlement amount assessed pursuant to paragraph 14. The Company also agrees not to contest the legal basis for any stipulated fines assessed pursuant to paragraph 15 of this Consent Order but reserves the right to dispute in a court of competent jurisdiction the factual basis upon which a demand by MDEQ of stipulated fines is made. In addition, the Company agrees that said fines have not been assessed by the MDEQ pursuant to Section 5529 of Part 55, MCL 324.5529, and therefore are not reviewable under Section 5529 of Part 55.

19. This compliance program is not a variance subject to the 12-month limitation specified in Section 5538 of Part 55, MCL 324.5538.

20. This Consent Order shall remain in full force and effect for a period of at least three (3) years. Thereafter, this Consent Order shall terminate only upon written notice of termination issued by the AQD Director. Prior to issuance of a written notice of termination, the Company shall submit a request, to the AQD Director at the Michigan Department of Environmental Quality, Air Quality Division, P.O. Box 30260, Lansing, Michigan 48909-7760, consisting of a written certification that the Company has fully complied with all the requirements of this Consent Order and has made all payments including all stipulated fines required by this Consent Order. Specifically, this certification shall include: (i) the date of compliance with each provision of the compliance program and the date any payments or stipulated fines were paid; (ii) a statement that all required information has been reported to the AQD Saginaw Bay District Supervisor; (iii) confirmation that all records required to be maintained pursuant to this Consent Order are being maintained at the Croswell Facility; and, (iv) such information as may be requested by the AQD Director.

21. In the event Michigan Sugar Company sells or transfers the Croswell Facility, it shall advise any purchaser or transferee of the existence of this Consent Order in connection with such sale or transfer. Within thirty (30) calendar days, the Company shall also notify the AQD Saginaw Bay District Supervisor, in writing, of such sale or transfer, the identity and address of any purchaser or transferee, and confirm the fact that notice of this Consent Order has been given to the purchaser and/or transferee. As a condition of the sale, the Michigan Sugar Company must obtain the consent of the purchaser and/or transferee, in writing, to assume all of the obligations of this Consent Order. A copy of that agreement shall be forwarded to the AQD Saginaw Bay District Supervisor within thirty (30) days after assuming the obligations of this Consent Order.

22. Prior to the effective date of this Consent Order and pursuant to the requirements of Sections 5511 and 5528(3) of Part 55, MCL 324.5511 and MCL 5528(3), the public was notified of a 30-day public comment period and was provided the opportunity for a public hearing.

23. Section 5530 of Part 55, MCL 324.5530, may serve as a source of authority but not a limitation under which this Consent Order may be enforced. Further, Part 17 of the NREPA, MCL 324.1701 *et seq.*, and all other applicable laws and any other legal basis or applicable statute may be used to enforce this Consent Order.

24. The Company hereby stipulates that entry of this Consent Order is a result of an action by the MDEQ to resolve alleged violations of its Croswell Facility located at 159 South Howard Avenue, Croswell, Sanilac County, Michigan. The Company further stipulates that it will take all lawful actions necessary to fully comply with this Consent Order, even if the Company files for bankruptcy in the future. The Company will not seek discharge of the settlement amount and any stipulated fines imposed hereunder in any future bankruptcy proceedings, and the Company will take necessary steps to ensure that the settlement amount and any future stipulated fines are not discharged. The Company, during and after any future bankruptcy proceedings, will ensure that the settlement amount and any future stipulated fines remain an obligation to be paid in full by the Company to the extent allowed by applicable bankruptcy law.

The undersigned certifies that he/she is fully authorized by the Company to enter into this Consent Order and to execute and legally bind the Company to it.

MICHIGAN SUGAR COMPANY

Kenneth W. Bennett Factory Manager
Print Name and Title

Kenneth W. Bennett Date: 11/27/2018
Signature

The above signatory subscribed and sworn to before me this 27 day of November, 2018.

Wanita Junga
Notary Public Signature

Wanita Junga
Notary Public Printed Name

My Commission Expires: 12-3-2020

Approved as to Content:

Mary Ann Dolehanty
Mary Ann Dolehanty, Director
AIR QUALITY DIVISION
DEPARTMENT OF
ENVIRONMENTAL QUALITY

Dated: 12/7/18

Approved as to Form:

Neil Gordon
Neil Gordon, Section Head
ENVIRONMENTAL REGULATION SECTION
ENVIRONMENT, NATURAL RESOURCES,
AND AGRICULTURE DIVISION
DEPARTMENT OF ATTORNEY GENERAL

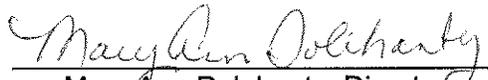
Dated: December 5, 2018

FINAL ORDER

The Director of the Air Quality Division having had opportunity to review this Consent Order and having been delegated authority to enter into Consent Orders by the Director of the Michigan Department of Environmental Quality pursuant to the provisions of Part 55 of the NREPA and otherwise being fully advised on the premises,

HAS HEREBY ORDERED that this Consent Order is approved and shall be entered in the record of the MDEQ as a Final Order.

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY



Mary Ann Dolehanty, Director
Air Quality Division

Effective Date: 12/7/18